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मामला क्रमांक Cr. A. No. 136/2002 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 136/2002

APPELLANT Mongra Bai wife of Santu Ravat, aged about 30 years, resident of village Sorla, P.S. Bemetara, Distt. Durg, Chhattisgarh

Versus

RESPONDENT State of Chhattisgarh, through Police Station, Bemetara, Distt. Durg, Chhattisgarh

D.B. : Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

28-6-2007

Ku. Sunita Jain, Advocate, for the appellant.

Shri Ashish Shukla, Addl. Public Prosecutor, for the respondent/State.

Arguments heard.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 21-11-2001 passed by the 2nd Addl. Session's Judge (F.T.C.), Bemetara in S.T. No. 306/2000, whereby the learned Additional Sessions Judge acquitted the accused Sevaram of the offence under Section 201 of I.P.C. He has also acquitted Godawari Bai of the offence under Section 302 of I.P.C. and accused Mongra Bai of the offence under Sections 318 and 201 read with Section

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34 of I.P.C. However, he has convicted the accused appellant Mongra Bai under Section 302 of I.P.C. and accused Godawari Bai under Sections 318 and 201 of I.P.C. Accused Godawari Bai has been sentenced to undergo R.I. for six months and R.I. for two years and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo R.I. for one month respectively. It is not known whether Godawari Bai has filed any appeal against the conviction and sentence. The accused appellant is sentenced to undergo imprisonment for life. Present appeal is by Mongra Bai against her conviction and sentence under Section 302 of I.P.C.

Prosecution case, in brief, is that Godawari Bai is the wife of Shivkumar, younger brother of co-accused Sevaram and Mongra Bai, the present appellant is the elder sister of Godawari Bai. Mongra Bai was deserted by her husband two years prior to the date of incident. Mongra Bai came and stayed with her sister Godawari Bai. Mongra Bai gave birth to a child in the house of Godawari on 8-6-2000. Thereafter Mongra Bai and Godawari Bai committed murder of the female child by pressing her neck and threw the body in manure pit of Sevaram. Thereafter Mongra Bai and Godawari Bai went to their village.

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	Thereafter accused Sevaram threw the dead body of the child in the Nullah. On enquiry, accused Sevaram disclosed that Mongra Bai came to the house of his brother Shivkumar. She was pregnant. She stayed in the house of Shivkumar for about 8 days and the child is of Mongra Bai. Coming to know about this fact, village Kotwar Vivek Das (P.W.1) lodged report Ex. P-1 in Police Station, Bemetara. After registering the case, the Investigating Officer left for the place of occurrence, after giving notice Ex. P-6 to the Panchas, prepared inquest Ex. P-7 on the body of the baby. Halka Patwari prepared site plan Ex. P-7-A. Body was sent for post mortem examination under Ex. P-13, the Doctor after post mortem examination prepared report Ex. P-9, in which he opined that cause of death of baby was asphyxia due to strangulation. One rope like cloth which was around the neck of child was seized under Ex. P-14. Based on the memorandum Ex. P-2 given by Godawari Bai, one basket in which the body of the baby was kept was seized. Medical Examination of Mongra Bai was conducted and report Ex. P-11 was prepared by Dr. Mamta Pandey (P.W. 10). A sari of Mongra Bai was seized under Ex. P-4. Earth of the place where Mongra Bai gave birth to the child was seized under Ex. P-5. After completion of the investigation, charge sheet was filed against Godawari Bai, Sevaram and Mongra	

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Bai in the Court of A.C.J.M., Bemetara, who in turn committed the case to the Sessions Judge, Bemetara from where learned Addl. Sessions Judge received the case on transfer for trial.

Prosecution in order to establish the charge against the accused persons, examined 12 witnesses. Statement of accused persons were recorded under Section 313 of Cr.P.C. in which Mongra Bai pleaded innocence in reply to the questions put by the trial Court. She stated that she is innocent and she has been falsely implicated in the crime. The other accused persons also pleaded innocence and stated that they have been falsely implicated in the crime. After hearing the counsel for the respective parties, the learned Addl. Sessions Judge convicted and sentenced the accused appellant as aforementioned.

We have heard Ku. Sunita Jain on behalf of the appellant and Shri Ashish Shukla on behalf of the State.

In order to establish the charge against the accused appellant under Section 302 of I.P.C., the prosecution was required to establish from the cogent legal evidence that (i) Mongra Bai gave birth to a live baby; and (ii) Mongra Bai committed murder of that baby.

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	Having heard the counsel for the parties, we have perused the evidence available on record. P.W. 1 Vivek Das, is village Kotwar who lodged the report Ex. P-1. He has stated that in the morning, his nephew Rohitdas informed him that a body of a baby is lying near manure pit of Sevaram. When he was going towards that site, Sevaram met him on the way. He said that he has kept the baby in a safe place. Thereafter he went to lodge the report and lodged the report Ex. P-1. In para 3 of the evidence, he has stated that he does not know who gave birth to the child. There was no such lady in the village who was pregnant. However, some ladies had informed him that in the last rights ceremony of Hiraman Singh, Mongra Bai came who was pregnant. This fact was informed to him by Shanti Bai. But he himself had not seen Mongra Bai whether she was pregnant or not. Sevaram also informed him that Mongra was pregnant. Shantibai has not been examined. Therefore, there was no personal knowledge to this witness regarding the pregnancy of Mongra Bai. P.W. 2 Prahlad has turned hostile and has stated that on 9-10th June, 2000 in the morning at about 7.00 a.m. the body of a newly born baby was found in their village, which was lying near manure pit of Sevaram, thereafter Sarpanch Hemant Kumar was informed and villagers collected there.	

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Godawari Bai was missing from the house since morning. This witness has been declared hostile and has not supported the prosecution case.

P.W. 3 Hemant Kumar Patel, Sarpanch of the village has stated that the accused persons are known to him. In the morning of 10th June, 2000 at about 7.00 a.m., Up Sarpanch Prahlad Patel informed that the body of a newly born baby was lying near the manure pit of Sevaram, therefore, he went near the place and saw the body, thereafter the matter was reported in the police station. He has further stated that inquest Ex. P-7 on the body of the baby was prepared in his presence. The basket was seized at the instance of Godawari Bai. In para 6, he has stated that 3-4 days before the date of incident, Mongra Bai came to the house of Shivkumar. On the day when they saw the body, the accused ladies were not in the village that is why people were suspecting that after giving birth to the child, the accused ladies have left the place. Therefore, his evidence is not directly to the point that he saw the accused in a pregnant stage.

P.W. 4 Smt. Kamla Bai has also turned hostile and she has not supported the prosecution case. P.W. 5 Than Singh has stated that he does not know to whom the child was belonging and who left the body in the manure pit of

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Sevaram, therefore, he did not see Mongra Bai in the village. Similarly, P.W. 6 Dhal Singh has also been declared hostile and he has not supported the prosecution case. P.W. 7 Rajkumar has been declared hostile and he has also not supported the prosecution case. P.W. 8 V.K. Shukla is retired Inspector of Police who has stated that P.W. 1 Vivek Das, Kotwar lodged the report Ex. P-1 while he was in-charge of the Police Station, Bemetara. P.W. 9 Dr. N.K. Tiwari has stated that on 10-6-2000, he conducted post mortem on the body of the baby weighing 1.80 *Kg.* He also conducted Hydrostatic test which was positive. There was ligature mark on the neck. There was cloth around the neck of baby. On dissection of ligature mark, there was extravasation of blood in subcutaneous tissue of muscles of neck, cause of death was asphyxia as a result of strangulation. In cross-examination, he has stated that he has not mentioned in the post mortem report that the injury was ante mortem in nature. He has not mentioned in the report that the death was homicidal in nature. P.W. 10 Dr. Mamta Pandey who examined Mongra Bai, has stated that on 11-6-2000 at about 12.30 noon, she examined Mongra Bai. She examined the breast of Mongra Bai and milk was present in the breast. Size of the womb was 14 weeks pregnancy and uterus was also

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	equivalent to 14 weeks pregnancy. If the evidence of this witness is scrutinized, she has stated that the size of womb was equivalent to 14 weeks pregnancy and size of uterus from inside was also equivalent to 14 weeks. Normal delivery period is 36 to 38 weeks and there is no evidence that in how much period, fetus gets life. Even P.W. 9 Dr. N.K. Tiwari has not stated about the age of the fetus. There is no ocular evidence to the effect that what was the stage of the pregnancy of Mongra Bai. Therefore, without cogent circumstantial evidence, merely on the basis of Hydrostatic test, which was found positive, it cannot be held that the baby was born alive. The Hydrostatic test must be corroborated by other circumstantial evidence in order to reach the conclusion as to whether the child was born alive or not. More over, in the evidence of the witnesses referred to above, there is no cogent and clear evidence that Mongra Bai gave birth to an alive child except that the evidence of Dr. Mamta Pandey (P.W. 10) who examined Mongra Bai that on pressing the breast, milk was coming out from the breast and size of womb and uterus was equivalent to 14 weeks, there is no other evidence that Mongra Bai gave birth to an alive child.	

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	For the foregoing reasons, we are of the considered opinion that the prosecution has not been able to establish by clear, clinching and legal evidence beyond reasonable doubt that Mongra Bai gave birth to a live child, and thereafter the death of the child was caused by strangulation. In the result, the conviction of Mongra Bai for commission of offence under Section 302 of I.P.C. cannot be sustained. The appeal filed by the appellant succeeds. Accordingly conviction and sentence of the appellant is set aside. She be set at liberty forthwith if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**